



January 20, 2015

Ms. Nycia Deal
General Counsel
State Board of Dental Examiners
333 Guadalupe, Tower 3, Suite 800
Austin, Texas 78701-3942

OR2015-01080

Dear Ms. Deal:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 550565.

The State Board of Dental Examiners (the "board") received requests for all self-reports of patient death and hospitalization received by the board, the self-reports of four named dentists, and certain information pertaining to one of the named dentists.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor has asked the board to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the board has made a good faith effort to do so.

¹We note, and you acknowledge, the board did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Next, we note you have not submitted any information responsive to the portion of the request seeking certain information pertaining to one of the named dentists. Although you state the board has submitted a representative sample of the requested self-reports, we find the submitted information is not representative of the remaining categories of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the board to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the request for certain information pertaining to one of the named dentists existed on the date the board received the request, we assume you have released such information. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 254.006 of the Occupations Code, which states:

(a) Except as provided by this section, the investigation files and other records of the board are public records and open to public inspection at reasonable times.

(b) Investigation files and other records are confidential, except the board shall inform the license holder of the specific allegations against the license holder. The board may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency.

(c) The exception from public disclosure of investigation files and records provided by this section does not apply to the disclosure of a disciplinary action of the board, including:

(1) the revocation or suspension of a license;

(2) the imposition of a fine on a license holder;

(3) the placement on probation with conditions of a license holder whose license has been suspended;

(4) the reprimand of a license holder; or

(5) the issuance of a warning letter to a license holder.

Occ. Code § 254.006. You state the submitted information consists of investigation files and records of the board compiled in response to complaints filed against dentists licensed by the board. You do not indicate, and the submitted information itself does not reflect, that subsection 254.006(c) is applicable to any of the information at issue. Therefore, based on your representations and our review of the submitted information, we conclude the submitted information is confidential under section 254.006(b) of the Occupations Code and must be withheld in its entirety under section 552.101 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 550565

Enc. Submitted documents

c: Requestor
(w/o enclosures)